

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1444 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

BANK OF INDIA

Versus

SHRIKANT WELDING WORKS

Appearance:

MR JT TRIVEDI for Petitioner
RULE SERVED for Respondent No. 1
MR JV BHAIKAVIA for Respondent No. 2
SERVED BY AFFIX.-(R) for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 18/04/2000

ORAL JUDGEMENT

This Revision application has been filed under Section 115 of the Code of Civil Procedure, 1908 challenging the order dated 16.7.1999 recorded by the

Civil Judge (SD), Navsari in Execution Petition No.23/95 whereby the learned executing court directed that the petitioner bank has to accept the principle amount due without any interest and the respondent has to pay the said amount without any instalment if paid within one month from the date of the order. It is further directed by the Court that on failure of deposit within one month, the bank will recover all the due amount with 12% penal interest and cost of the applicant. There was a decree in favour of the petitioner-bank and, therefore, execution petition was filed. On 16.7.1999, an application at exh.42 was submitted jointly by the parties. There some negotiations took place and a compromise was arrived at. It was, therefore, mentioned in the application Exh.42 that the respondent being the judgment debtor was prepared to pay Rs.2,03,839.81. However, the petitioner bank desired to recover the whole amount with interest. That the petitioner bank was prepared to extend instalment to the respondent-judgment debtor. That the respondent-judgment debtor was agreeable to pay amount as may be fixed by the Court. Therefore, the Court should pass appropriate order. On the aforesaid premises, the above order was passed by the court below. It has been strenuously contended that the trial court has no jurisdiction to cut down the interest totally.

2. It is very clear that the decree was in favour of the petitioner for principal amount as well as for the interest. By the aforesaid order, the interest has been totally cut down by the executing court. It is very clear that so far as the executing court is concerned it has to execute the decree as it stands. It cannot modify or alter by deducting the amount of interest. The executing court has indirectly modified the decree. Therefore, the said order was without jurisdiction as the executing court has no jurisdiction to pass such an order.

None present on behalf of the respondent.

3. In view of the aforesaid, the order of the executing court is without jurisdiction and has resulted into failure of justice. Since the petitioner is deprived of sizeable amount of interest, this Court is required to interfere with the order of the executing court.

4. This petition is, therefore, allowed. The order passed by the executing court dated 16.7.1999 is set aside. The petitioner is held to be entitled to interest

in terms of the decree passed in the aforesaid matter. The matter shall be remanded to the executing court for further proceedings for the recovery of interest. In case, the executing court feels that the petitioner has not calculated the interest, though it has calculated in the form of execution petition, the executing court will be at liberty to ask the petitioner to submit the calculation showing the amount due as interest.

Rule made absolute to the extent as indicated above. The respondent shall pay costs of this petition.

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msp.